and sentence.... Pin prick sentence does not serve any useful purpose. It does not amount to punishment. In order to be a punishment a substantial term of imprisonment is essential. In my view the sentence imposed by the learned president does not reflect the gravity of the offence.

In revision I set aside that sentence and substitute it with a sentence of 2 years imprisonment and order refund of $500 to the complainant."

Subsequently the applicant applied under section 66 of the Courts of Judicature Act 1964 to the learned Appellate Judge to reserve for the decision of the Federal Court two questions of law. The learned judge rejected one of the questions but allowed the other which reads as follows: —

"Whether having regard to the provisions of section 325(ii) of the Criminal Procedure Code (F.M.S. Cap. 6) the High Court may enhance sentence without giving a convicted person notice of his intention to do so or without an opportunity being given to show cause why the sentence should not be enhanced."

It will be apparent from the terms of reference that we are asked to say whether the High Court in the circumstances of the case has the power, in exercise of its revisionary jurisdiction, to enhance the sentence without prior notice of its intention to do so to the applicant or without an opportunity being given to show cause as required under section 325(ii) of the Criminal Procedure Code.

Chapter XXXI of the Code which deals with revision gives power to a judge to call for and examine the record of any proceedings before any inferior court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed. He may thereupon in such a case or in any other case which otherwise had come to his knowledge, in his discretion exercise any of the powers conferred by sections 311, 315, 316 and 317 of this Code. The words "or in any other case which otherwise had come to his knowledge" would appear to show that his power of revision may be exercised by the High Court in a matter which comes to him by way way of an appeal. See *In re Chunbidya & Ors.*[1] a Privy Council decision reported at page 36 of the Law Reports Indian Appeals Vol. LXII — 1934 — 1935. In other words it is not disputed that in the instant case, the learned judge has authority to deal with the sentence of the case. But it was argued that he had however, failed to consider the provisions of section 325(ii) of the Code which provides as follows: —

"(ii) No order under this section shall be made to the prejudice of the accused, unless he has had the opportunity of being heard, either personally or by advocate in his own defence."

An enhancement is without doubt an order to the prejudice of the applicant and, if the judge purported to act under Chapter XXXI, compliance with section 325(ii) is mandatory. Such opportunity had clearly not been given in this case.

In this case there is no doubt that since the appeal against sentence had not been withdrawn, the learned trial judge had the power to deal with the matter. That might be so, but under the terms of the reference we have no doubt that in the circumstances he has no such power to do so and in the event the answer to this reference would be in the negative.

The question now is what we should do next. Under section 66(5), this court may in the circumstances of the present case make such orders as the High Court might have made as it may consider just for the disposal of an appeal. This court may set aside the order of the High Court since it was wrong on a question of law. We therefore restore the original sentence made by the Sessions Court.

One matter however needs observation. It seems to have been thought that in an appeal from conviction only the judge, if he wishes to enhance the sentence, has to resort to revisionary powers, as was done in India prior to 1955, when no power to enhance was vested in the appellate judge (section 423 of the Indian Code) though power of enhancement is given in section 439, (in *pari materia* with our section 325) by way of revision. In our Code, on the other hand, section 316 clearly empowers the court, whether on appeal from conviction only or on appeal as to sentence only, to reduce or enhance the sentence and it is unnecessary therefore to have recourse to Chapter XXXI. Though this power exists — and there is no provision requiring notice to be given to show cause, as laid down in the proviso to subsection (1A) of section 423 of the Indian Code — it is desirable that, before exercising such power, the judge should ask appellant whether he has anything to say.

*Original sentence restored.*

Solicitors: *Seenivasagam & Sons.*

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## SIVASUBRAMANIAN v. CHONG CHEONG WAH & ANOR.

**[O.C.J. (Syed Othman J.) December 13, 1972]**

**[Kuantan — Civil Suit No. 114 of 1970]**

*Control of Publications — Seizure of article suspected to contain any prohibited or prejudicial publication — Impounding of prejudicial publication — Control of Imported Publications Act, 1958, ss. 9(1) and 18.*

In this case the police searched the plaintiff's house and seized a number of books. Subsequently all of these books were returned except one, which it was claimed "had been declared prejudicial to security". The plaintiff sought the return of the book and damages for its detention.

**Held:** (1) the police officer must have suspected the books to contain prejudicial pubilcations when he seized them and therefore the seizure of the books was lawful;

(2) there was no evidence to show that the book was impounded in accordance with the Control of Imported Publications Act and therefore the impounding was unlawful and the book should have been returned to the plaintiff or damages paid to him. As the book was destroyed by fire the plaintiff should be paid the cost of the book fixed at $3.60.

CIVIL SUIT.

*Lim Kean Chye* (*K. K. P. Nathan* and *S. Sivasubramanian* with him) for the plaintiff.

*Abdul Razak bin Datuk Abu Samah* (Senior Federal Counsel) for the defendants.

**Syed Othman J.:** This case is over a book, a paper-back worth $3.60. But it involves a man's right

to his property and the Government's right to take it away from him. The book is a "Pelican" original entitled "Lenin" by David Shub.

The plaintiff is an advocate and solicitor and also a member of the State Legislative Assembly in Pahang. He seeks the return of the book which was seized from him in January, 1970, and damages for its detention. According to the statement of claim on 30th April, 1970 and again on 30th October, 1970, he demanded the return of the book but the defendants have refused or failed to deliver it.

The defendants admit having seized the book but say that the seizure was lawful as the book contained prejudicial publication and the seizure was made under the provisions of section 9(1) of the Control of Imported Publications Ordinance, 1958. (The Ordinance has now been revised and numbered as Act 63).

When the case came up for hearing, plaintiff's counsel sought amendments to the statement of claim by adding the prayer for a declaration that the seizure was unlawful and altering the date of the seizure from "20th" to "21st" January, 1970. Counsel for the defendants objected to the application. He said the amendments would cause an injustice to the defendants, as they would change the character of the suit and that, in any case, the amendments were caught by limitation under section 2 of the Public Authorities Protection Ordinance, 1948, as the application was made after one year from the action. I allowed the amendments. I do not see that the amendments would cause any prejudice to the defendants and that they are such as to turn the suit into a different character. It is agreed that the seizure was in fact on 21st and not 20th January, 1970. I consider that on the face of the pleadings an order for delivery of the book would be incidental to a finding that its seizure or retention was wrongful. I do not think limitation applies to this case, as the question whether or not the act was done pursuant to a lawful exercise of power or duty is yet to be determined.

Counsel for the defendants also raised a preliminary objection. He said in effect that since the defence was that the seizure was made under the provisions of Act 63 the court had no jurisdiction to entertain the suit by reason of section 18, which reads:

"No legal proceedings whatsoever shall lie or be instituted or maintained in any court for or on account of any loss of, or damage to, any article or publication seized, detained, confiscated or destroyed under this Act or for or on account of any damage sustained as a result of the seizure, detention, confiscation, destruction or return of any article or publication under this Act or of any delay in the delivery or return of any article or publication to the person to whom the article or publication would have been delivered but for its detention under this Act."

On behalf of the plaintiff, it was argued that it was disputed that the seizure had been made under the Act; so far as the plaintiff was aware the seizure had been under the Internal Security Act. Counsel for the defendants then admitted that the seizure had been at first under the Internal Security Act but that was a mistake which had been corrected. After hearing arguments from both sides, I ruled that I would hear the evidence. These are my grounds. There is no rule which states that simply because a defence is raised that an action or an exercise of power is barred by reason of a particular provision of law, the court is precluded from determining whether in fact it was such an action or exercise of power. As far as I can see, it would be a matter for the defence to show that it was such an action or exercise of power. In this case it was claimed that the court had no jurisdiction, but the defence did not enter conditional appearance and apply to the court for the action to be set aside. Then after having failed to do this, they did not even seek recourse to Order 25 rule 2. They did not apply by summons for direction for the matter to be disposed of before trial. They have not deposed as to any facts for determination purely on a question of law whether or not the action or exercise of power was within the provisions of section 18 of Act 63.

On further considering section 18, I am of the view that the restriction imposed by the section should be confined to its four walls. It bars only (1) proceedings for or on account of any loss of or damage to any article or publication seized, detained, confiscated or destroyed under the Act; or (2) proceedings for or on account of any damage sustained as a result of seizure, detention, destruction or return of any article or publication under the Act, or of any delay in the delivery or return of any article or publication.... The provisions cannot be read as precluding the court from determining the propriety or legality of any seizure, detention, confiscation and destruction made under the Act. The section does not mention "impounding".

The plaintiff's evidence is to this effect. He was under detention at the time. On 21st January, 1970 the first defendant, an acting Assistant Superintendent of Police, took him back to his house in Union Gardens, Kuantan. The first defendant took six books from the house. The book on "Lenin" was among the books. On 18th April, 1970 the first defendant wrote him a letter while he was in the Detention Camp at Batu Gajah returning all the books except the one on "Lenin". Paragraph 2 of the letter reads:

"2. Except for the publication entitled 'LENIN — BY DAVID SHUB', which is deemed prejudicial, the following books are returned herewith:—

a) CONVERSATION WITH STALIN,
b) THE RED BOOK & THE GREAT WALL,
c) STALIN,
d) KHRUSHCHEV,
e) MAO TSE TUNG."

Then on 7th May, 1970 in reply to a letter by the plaintiff the first defendant wrote in paragraph 2.

"The book on 'Lenin' by David Shub has been declared prejudicial to security by the Ministry of Home Affairs, on 22nd August, 1966. Being so, I regret I cannot return the book to you."

The plaintiff on 30th October, 1970 replied stating that he had checked the Gazettes for the year 1966 but could not find the declaration; he asked for the return of the book unless the first defendant could quote the proper notification. On 24th November, 1970 the plaintiff wrote a letter to the "Ketua Setiausaha Kementerian, Hal Ehwal Dalam Negeri, Malaysia, Kuala Lumpur" enquiring whether "Lenin" by David Shub had been "prescribed" under the Internal Security Act or Act 63.

In the meanwhile he received a letter (P10) from the "Ketua Chawangan Khas" (Chief of the Special Branch) dated 7th December, 1970 informing him that the book had been prohibited under L.N. 329/52 as amended by L.N. 191/60 and referring him to a provision in the Internal Security Act relating to prohibited publication. The plaintiff looked up these notifications but could not find the prohibition. On 8th December, 1970 he commenced action. By a letter dated 21st December, 1970 (P6), an officer writing on behalf of the "Ketua Setiausaha, Kementerian Hal Ehwal Dalam Negeri" (Chief Secretary, Ministry of Home Affairs) replied to the plaintiff's letter of 24th November, 1970 informing him that the book had been "deemed prejudicial under the Control of Imported Publications Ordinance, 1958".

The defence case may be put shortly as follows. The first defendant, an authorized officer under Act 63, seized the book for checking with the police headquarters. After checking he found it to be prejudicial because of a circular (D11) issued by A.S.P. Suleiman, DW2, his superior officer. According to the "Ketua Chawangan Perisekan" (DW3) he made a genuine mistake in sending the letter of 7th December, 1970 (P10) and the seizure of the book was in fact under Act 63. A translation of the main part of the circular, which was marked "sulit" (confidential) reads as follows: —

*"Publications of prejudicial nature*

1. 'LENIN' (Biography)

2. 'Best Nymph' (Story book)

Cards attached herewith relate to publications which have been declared to be prejudicial nature.

2. You are required to carry out examination in book shops in your area and if the above publications are found to be sold, you are to take appropriate action as follows.

'After seizure under section 9(1) of the Control of Imported Publications Ordinance No. 44/1958:

(a) if there are numerous copies, permission may be given for them to be returned to the consignor, pursuant to the proviso to section 9(2) of the said Ordinance;

(b) if one or two copies, keep them in custody pursuant to section 9(2)(b) of the said Ordinance; or

(c) destroy them pursuant to section 9(2)(b)(i) of the said Ordinance.'

3. Please send report of examination on or before 9 September, 1966.

Signature

(Suleiman bin Mohamed Ali)
On behalf of Director, Special Branch
On behalf of Inspector General of Police".

In their defence, the defendants rely on section 9(1) of the Act justifying the seizure. Since the plaintiff's claim is also for the return of the book, it is clearly necessary for me to consider sub-section (2) of the section. The relevant provisions read: —

"9.(1) Any authorized officer may seize, detain, open and examine any article which he suspects to contain any prohibited or prejudicial publication or any extract therefrom; and during the examination he may detain any person importing, distributing or posting the article, or in whose possession the article is found.

(2) If after any such article has been opened and examined it is found —

(a) to contain or to consist of any prohibited publication or any extract therefrom, the article may be impounded and detained by an authorized officer for so long a period as he deems necessary and the person importing, distributing or posting it, or in whose possession it is found, may forthwith be arrested by the officer and proceeded against for the commission of an offence against section 8 or 10, as the case may be;

(b) in the opinion of an authorized officer to contain or to consist of any prejudicial publication or any extract therefrom, the article may with the approval of a Controller, be impounded by an authorized officer and withheld from delivery or return; and the officer may, with the approval of the Controller —

(i) destroy or cause to be destroyed the article or the contents thereof consisting of any such publication; and

(ii) deliver or cause to be delivered any such article or contents thereof which does not in the opinion of the Controller consist of such publication to the person to whom it would have been delivered if it had not been detained under this section, or in whose possession it was at the time of its seizure:

Provided always that instead of destroying or causing any such article to be destroyed the Controller may permit its return to the sender thereof."

Sub-section (2)(a) of the section does not apply to this case because it relates to prohibited publication *i.e.* publication the importation of which has been prohibited by the Minister under section 4. The book apparently is not a prohibited publication.

The provisions relevant to the case are sub-sections (1) and (2)(b). By these provisions there are two steps which the defendants should have taken in order to justify the retention of the book. The first step is the seizure and the second is the impounding. Seizure contemplated by the Act is the act of taking away the book. In this case, it was when the first defendant took away the book from the plaintiff's house. Impounding should have occurred when the first defendant returned the other five books but not this particular book.

In arguments section 9(2) was referred to but neither counsel saw it fit to draw the distinction between "seizure" and "impounding". Both used the word "seizure" in the very loose sense covering not only the taking away of the book but also the retention of the book. In considering this case it is necessary to draw the distinction and to treat the two acts separately.

Under section 9 of the Act, seizure can be made if the authorized officer suspects any article to contain any prejudicial publication and impounding can only be made if after such article has been opened and examined, it is found, in the opinion of the authorized officer, to contain or to consist of any prejudicial publication. Impounding must be with the approval of a Controller.

The first question to be determined is whether the declaration that the seizure of the book was wrongful should be made.

The evidence shows that when the first defendant went to the plaintiff's house he did not seize this one book only; he also seized five other books. It may be that at that time he had not even read any of the books. He frankly admits that he has not read the book on "Lenin". Almost all the books which he seized relate to leaders in the Communist world. The political situation in the country at the time was such that I would be surprised if any member of the Special (now Intelligence) Branch would not be suspicious of any book with a reddish tinge as its title. In the circumstances of the case, particularly having regard to the fact that

the plaintiff himself was under detention under the Internal Security Act, the first defendant must have suspected the six books to contain prejudicial publications. It may be that at the time he did not address his mind to the particular provision of law or that he was only vaguely conscious of the circular (D11) (which I shall deal with fully later). But I am not aware of any requirement of law that an officer should address his mind to the particular law in invoking his powers. I doubt very much if any police officer, making an arrest on suspicion that a crime has been committed, would direct his mind to the particular provision of the Criminal Procedure Code. The question is whether he has the power to act under the law. If he has, then I think it would be unnecessary to enquire whether he directed his mind to the particular law at the time of exercising that power. If he makes a mistake in the location of the law at the time, there is nothing to prevent him from correcting it subsequently, as in this case. To all this I have also to consider the conduct of the plaintiff himself at the time of the seizure and the letters which he subsequently wrote to the police officers and the Ministry of Home Affairs. To my mind, if in fact he is seriously challenging the seizure, he should be questioning not just that of this book but also that of the five other books. The 6 books were seized at the same time. Then the declaration was sought only at a late stage of the trial. Delay in applying for a declaration in a matter of this nature, to my mind, should always be a factor which affects the exercise of the court's direction. The strong impression which I have is that the plaintiff's real grievance is not against the seizure but against the retention *i.e.* the impounding of the book. Taking all the above into consideration, I do not think the declaration which the plaintiff seeks should be made.

The next question to be determined is whether an order for the return of the book should be made. To determine this, it is necessary to consider whether the impounding of the book was in accordance with the provisions of sub-section (2)(b) of section 9 of the Act.

The plaintiff's evidence on the point is that up to the time he commenced action no one from the Government side told him by virtue of what provisions of law had the book been retained; he was referred to some Gazette notifications which do not show that the book has been prohibited. The notifications he was referred to, L.N. 329/59 and L.N. 191/60, in fact relate to prohibited books under the emergency regulations and the book is not in the list. It is clearly then a matter for the defendants to show that the impounding was lawful.

As indicated above the defendants only pleaded as to the seizure of the book. They do not plead as to impounding. In evidence they mainly rely on circular D11 to justify the retention of the book.

I shall now discuss the circular. It was signed by A.S.P. Suleiman, an authorized officer, on behalf of the Director of the Special Branch and on behalf of the Inspector General of Police. According to him, the circular was issued in this manner following administrative practice. On the face of it, I can only conclude that it must have been issued at the direction of the Inspector General of Police. As it stands, there is an odd situation. The Inspector General may be the head of the Police Force. But for the purpose of the Act, I can trace no Gazette notification appointing him even as a Controller under section 3 of the Act. P.U. 356 of 1968 which appoints Controllers reads as follows:

"CONTROL OF IMPORTED PUBLICATIONS ORDINANCE, 1958.

Appointments under Section 3.

In exercise of the powers conferred by section 3 of the Control of Imported Publications Ordinance, 1958, the Yang di-Pertuan Agong has made the following appointments:

(a) Chief Controller of Imported Publications —

Principal Assistant Secretary (D), Ministry of Home Affairs, Malaysia, Kuala Lumpur.

(b) Controllers of Imported Publications —

Director, Special Branch, Royal Malaysia Police, Headquarters, Kuala Lumpur.

Heads, Special Branch in each State;

Assistant Secretary (D-1), Ministry of Home Affairs, Malaysia, Kuala Lumpur.

Chinese Affairs Officer, Ministry of Home Affairs, Malaysia, Kuala Lumpur.

State Secretary, Kedah;

State Secretary, Perlis;

State Secretary, Pahang;

Under Secretary (Internal Affairs) Johore;

Assistant State Secretary 'A', Selangor;

Assistant State Secretary 'B', Negeri Sembilan;

Fourth Assistant State Secretary, Perak;

Assistant State Secretary 'C', Malacca;

Chinese Affairs Officer (Special Grade) Johore.

The previous Legal Notifications are hereby cancelled."

Since under the Act the Inspector General does not appear to have been appointed to any office, he is only an authorized officer by operation of section 2 which defines "authorized officer"; he has no more power than the first defendant or A.S.P. Suleiman has; and he should be subject to the control of his subordinates in rank in the Police Force *i.e.* the Director and State Heads of the Special Branch who are appointed Controllers in the notification. He has, therefore, no overall authority under the Act. On this ground alone the circular is bad.

Going further, the first paragraph of the circular says that the two books have been declared to be of prejudicial nature and the circular is marked "confidential." I can see no provision in the Act whereby such a declaration may be made. I think it would be odd if a declaration can be made by a confidential circular.

Even if accepting that it is an administrative direction, I would hold that it is still bad, because it purports to dictate to an officer appointed by law as to the exercise of his discretionary power: an authorized officer to impound the books and a controller to approve the impounding. Section 9(2)(b) in effect requires that before an authorized officer impounds a book containing prejudicial publication he must form his own opinion that it is so and seek the approval of a controller. In forming his opinion it would be improper for him to rely on the opinion of others

Leaving aside all the above considerations, the circular is clearly intended for books in book shops. It contains no direction as regards books in private homes.

In this case the authorized officer, *i.e.* the first defendant who seized the book could not have formed the opinion that the book contained prejudicial publication, because on his own evidence he did not read the book. The defence adduced no evidence that any authorized officer has read the book or has formed that opinion. Although A.S.P. Suleiman signed the circular he does not say that he has read the book. Then to all this, the defence adduced no evidence that a controller has approved the impounding of the book. I do not think I can regard the letter (P6) from the "Ketua Setiausaha, Kementerian Hal Ehwal Dalam Negeri" as an approval to impound by the Chief Controller or a Controller of Imported Publications as it is not shown that the officer who wrote the letter holds either office. Under P.U. 356 of 1968 the officer in the Ministry of Home Affairs who is appointed the Chief Controller is the Principal Assistant Secretary, (D) and the officer appointed a Controller is the Assistant Secretary (D1). The Ketua Setiausaha, Kementerian Hal Ehwal Dalam Negeri for whom the letter was written does not appear to have any power at all under the Act. Apart from all this, there is no provision in the Act, whereby a book may be "deemed prejudicial" as stated in the letter.

I find that the defendants have not shown any evidence that the book was impounded in accordance with the Act. In my judgment, therefore, the impounding was unlawful and the book should have been returned to the plaintiff.

It is in evidence that the book was burnt when the Special (Intelligence) Branch Office in Kuantan was gutted by fire in February, 1971. The plaintiff has indicated that he will be satisfied with the cost of the book as damages. I therefore make the order that the defendants pay the plaintiff the sum of $3.60. As to the costs, it is now being urged that the award should be on the higher scale having regard to principles involved in the case. But in the circumstances of this case and considering the amount of loss involved, I would order the defendants to pay costs on the lower scale.

*Order:* Application for declaration that seizure was wrongful dismissed.

Defendants to pay plaintiff $3.60.

Costs to plaintiff on lower scale.

*Order accordingly.*

Solicitors: *S. Sivasubramanian.*

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## GOVERNMENT OF MALAYSIA v. D.C.

**[O.C.J. (Chang Min Tat J.) December 18, 1972]**

**[Ipoh — Civil Suit No. 95 of 1971]**

*Income Tax — Claim for tax — Certificate by Comptroller-General of amount of tax due — Income Tax Act, 1967, ss. 103, 106 and 142(1).*

In this case the action was for the sum of over $7 million for income tax for the years 1961 and 1964-1969 and for tin profits and penalty. It was argued in this case for the defendant that the very substantial amount claimed was "*prima facie* and without further and better particulars, grossly inflated and ambiguously, arbitrarily and illegally arrived at against all the rules of probability, bad in law and bad in fact". The defendant applied for the statement of claim to be struck out or alternatively for further and better particulars.

**Held:** the effect of sections 103 and 108 of the Income Tax Act, 1967 is that once an assessment is made the tax payable under the assessment shall on the service of the notice of assessment on the person assessed be due and payable at the place specified in the notice, whether or not the person appeals against the assessment and such tax due and payable may be recovered by the Government by civil proceedings as a debt due to the Government. In the circumstances the application to strike out the statement of claim must be dismissed and the application for further and better particulars refused.

*Cases referred to:-*

(1) *C.* v. *Comptroller of Income Tax* [1967] 2 M.L.J. 137.

(2) *Comptroller of Income Tax, States of Malaya* v. *H.K.V.* [1968] 2 M.L.J. 260

(3) *AB.C.* v. *Comptroller of Income Tax, Singapore* [1959] M.L.J. 166.

(4) *Comptroller of Income Tax* v. *A. Co. Ltd.* [1966] 2 M.L.J. 282.

(5) *Comptroller of Income Tax* v. *R.S.T.* [1962] M.L.J. 217.

(6) *A.B.* v. *Comptroller of Income Tax* [1967] 1 M.L.J. 11.

(7) *D.F.C. of T. (W.A.)* v. *Australian Machinery and Investment Co. Ltd.* (1945) 8 A.T.D. 133.

CIVIL SUIT.

*Tan Sri Khaw Khai Boh* (*Joseph Lai* with him) for the applicant (defendant).

*Zulkifli bin Mahmood* (Senior Federal Counsel) for the respondent (plaintiffs).

**Chang Min Tat J.:** The action is for a combined sum of $7,245,901.38 for income tax for the years of additional assessment 1961, and 1964-1969 inclusive and for tin profits tax under section 91 Fourth Schedule of the Income Tax Ordinance No. 48 of 1947 and penalty for the years 1961, and 1964-5. The tin profits claimed came up to $377,039. The penalty by itself totalled $67,319.99, as appeared in the endorsement of the writ.

The notice of assessment for the additional year of assessment 1964 was dated 28 April 1971. All the other notices of assessment were dated 26 March 1971. They were duly served on the tax-payer.

The writ was sued out on 13 May 1971. Reliance was put by the Government of Malaysia on section 103(1) of the Income Tax Act 1967 whereby the tax became payable on the service of the notices of assessment, whether or not the tax-payer had appealed against the assessment, and on section 106 which provided that the tax due and payable might be recovered by civil proceedings as a debt due to the Government.